

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JEREMY BAILEY,	:	
	:	
Plaintiff	:	No. 1:20-CV-1836
	:	
v.	:	Judge Kane
	:	
LIEUTENANT YODER,	:	Electronically Filed Document
SERGEANT R. BATIUK, C.O.	:	
DERR and C.O. ANTHONY,	:	<i>Complaint Filed 10/07/2020</i>
Defendants	:	

**DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION
FOR THE SCHEDULING OF AN EXHAUSTION HEARING**

Defendants, through counsel, hereby file this Brief in Support of their Motion for the Scheduling of an Exhaustion Hearing in the above-captioned matter pursuant to Local Rule 7.5.

RELEVANT PROCEDURAL HISTORY

Plaintiff filed his operative Amended Complaint on October 22, 2021, concerning events arising from his incarceration. (Doc. 56.) Plaintiff was released from incarceration on November 9, 2021. (Doc. 62.)

Defendants filed their Answer and Affirmative Defenses to the Amended Complaint on December 27, 2021. (Doc. 69.) In so doing, Defendants preserved the affirmative defense of failure to exhaust administrative remedies. (*Id.* at Affirmative Defense ¶4.)

ISSUES PRESENTED

Whether this Court should schedule a hearing to resolve the issue of the exhaustion of administrative remedies prior to scheduling trial?

Suggested Answer to All: Yes.

ARGUMENTS

Under the Prisoner Litigation Reform Act, as an incarcerated individual, Plaintiff was required to exhaust his administrative remedies prior to filing a federal suit. *See* 42 U.S.C. § 1997e(a). Furthermore, Plaintiff's Amended Complaint was filed prior to his release from incarceration, Plaintiff was required to comply with the PLRA exhaustion requirement. *See id.*

Defendants preserved the affirmative defense of failure to exhaust administrative remedies within their Answer and Affirmative Defenses. (Doc. 69 at Affirmative Defense ¶4.) In order to resolve the issue of whether Plaintiff exhausted his administrative remedies, Defendants respectfully request that this Court schedule an exhaustion hearing prior to the scheduling of trial in this matter.

CONCLUSION

Defendants respectfully requests that this Court schedule an exhaustion hearing on the unresolved issue of whether Plaintiff failed to exhaust his administrative remedies. Alternatively, Defendants request the scheduling of a teleconference with the Court to select a date for the exhaustion hearing.

Respectfully submitted,

MICHELLE A. HENRY
Acting Attorney General

Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
Phone: (717) 783-6315

myarish@attorneygeneral.gov

Date: February 2, 2023

By: s/ Mary Katherine Yarish
MARY KATHERINE YARISH
Deputy Attorney General
Attorney ID #328843

KAREN M. ROMANO
Chief Deputy Attorney General
Civil Litigation Section

Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JEREMY BAILEY,	:	
	:	
Plaintiff	:	No. 1:20-CV-1836
	:	
v.	:	Judge Kane
	:	
LIEUTENANT YODER,	:	Electronically Filed Document
SERGEANT R. BATIUK, C.O.	:	
DERR and C.O. ANTHONY,	:	<i>Complaint Filed 10/07/2020</i>
Defendants	:	

CERTIFICATE OF SERVICE

I, Mary Katherine Yarish, Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on February 3, 2023, I caused to be served a true and correct copy of the foregoing document titled *Defendants' Motion for the Scheduling of an Exhaustion Hearing* to the following:

VIA U.S. MAIL

Jeremy Bailey (#104262)
Dauphin County Prison
501 Mall Road
Harrisburg, PA 17111
Pro Se Plaintiff

s/ Mary Katherine Yarish
MARY KATHERINE YARISH
Deputy Attorney General